



THE COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY**

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April 24, 2006

Bruce P. Beausejour  
Vice President and General Counsel – New England  
Verizon Massachusetts  
185 Franklin Street, 13<sup>th</sup> Floor  
Boston, MA 02110-1585

Re: D.T.E. 03-50 – Performance Assurance Plan Audit  
Verizon Request to Amend Annual Audit Requirement

Dear Mr. Beausejour:

The Department instituted the annual audit requirement of Verizon Massachusetts' ("Verizon") Performance Assurance Plan ("PAP") in Order Adopting Performance Assurance Plan, D.T.E. 99-271 (September 5, 2000) ("Order Adopting PAP"). The first audit of the PAP was completed with the auditors issuing a Final Report on January 31, 2003. The Department issued a Letter Order on March 13, 2003 stating that, as a result of the first audit, no substantive changes in Verizon's PAP processes and procedures were necessary. Performance Assurance Plan, D.T.E. 99-271, Letter Order at 2 (March 13, 2003).<sup>1</sup>

On July 8, 2003, Verizon requested that the Department amend its requirement for an annual audit of the PAP to a triennial audit based on the positive results of the first audit.<sup>2</sup> The

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<sup>1</sup> The Department stated, in a letter issued in September 2002 that Verizon's first PAP audit would satisfy the audit requirements for 2001 and 2002. Performance Assurance Plan, D.T.E. 99-271, Letter Order at 2 (September 16, 2002).

<sup>2</sup> Letter to Mary L. Cottrell, Secretary, Department of Telecommunications and Energy  
(continued...)

Department solicited comments on Verizon's proposal. AT&T Communications of New England, Inc. ("AT&T") submitted comments on August 12, 2003, arguing that Verizon's description of its performance was overstated and inaccurate. Additionally, AT&T argued that the Department's Order Adopting PAP limits the Department's discretion to modify the audit requirement.

On October 22, 2003, the Department issued a Letter Order to Verizon in which the Department asserted its discretion to grant Verizon's request, notwithstanding AT&T's argument.<sup>3</sup> Performance Assurance Plan, D.T.E. 03-50, Letter Order at 3 (October 22, 2003). The Department declined to amend the annual audit requirement stating that while the results of the first audit demonstrated that Verizon's compliance with the data generation, calculation and reporting requirements of the Massachusetts PAP were good, the period of performance evaluated was inadequate (*id.*). At that time, the PAP had been in effect for two years and that first audit evaluated one month of Verizon's performance. The Department found that before it would consider modifying Verizon's annual audit requirement, at least one additional audit was necessary to confirm that Verizon's reporting was accurate (*id.* at 4). The Department stated that "[i]f the results of the next successive audit are as strong as those of the previous audit, a second successful audit would be strong evidence to support amending the frequency and scope of future audits, and the Department would consider such amendment at that time" (*id.*).

The second PAP audit of Verizon was completed with the auditors issuing a Final Report on June 29, 2005. The Department issued a Letter Order on September 14, 2005, which concluded that based on the results of the second PAP audit, Verizon was in full compliance with the PAP and that no substantive changes in Verizon's PAP compliance procedures were necessary or appropriate. Performance Assurance Plan, D.T.E. 03-50, Letter Order at 2 (September 14, 2005).<sup>4</sup>

On November 8, 2005, Verizon filed a second request with the Department to amend the annual PAP audit requirement to a triennial requirement that would be conducted at the

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<sup>2</sup>(...continued)

from Bruce P. Beausejour, Vice President and General Counsel, Verizon New England at 1 (July 8, 2003).

<sup>3</sup> In the Department's Order Adopting PAP, the Department stated that "[s]hould changes in market conditions warrant, the Department may revise its directives concerning audits, and the Department will decide when it is no longer necessary for these audits to be conducted." Order Adopting PAP at 33.

<sup>4</sup> The Department stated that Verizon's second audit would satisfy the audit requirements for 2003 and 2004. Performance Assurance Plan, D.T.E. 03-50, Letter Order at 1 (September 14, 2005).

discretion of the Department.<sup>5</sup> As primary support for its proposal, Verizon emphasized the favorable results of the first and second PAP audits in Massachusetts and the strong PAP reporting performance in other states. On November 10, 2005, the Department issued a Request for Comment on Verizon's proposal. Conversent Communications, Inc. ("Conversent") and CTC Communications ("CTC") submitted comments on December 8, 2005 ("Conversent Comments"), and December 14, 2005 ("CTC Comments"), respectively.<sup>6</sup> Conversent and CTC objected to Verizon's proposal to amend the annual audit requirement to a triennial audit and both argued against the audit being discretionary with the Department (Conversent Comments at 1-3; CTC Comments at 1-2).

Conversent argued that "Verizon's incentive for good performance drops precipitously if there is no prospect of an audit. . . . Verizon's audit performance to date results from its being subject to audit scrutiny" (Conversent Comment at 1-2). Conversent also asserts that the PAP is a key element in ensuring that local exchange markets remain open to competition and that a less than annual discretionary audit may have caused the FCC to deny Verizon's application to enter the long distance market in Massachusetts (*id.* at 2). Conversent also argues that the audit should not be discretionary. "There is substantial opportunity for lax performance if Verizon might escape audit. Even if poor performance by Verizon is discovered later, the damage to competition, CLECs [Competitive Local Exchange Carriers], and consumers will have been done and might be irreparable" (*id.*). Additionally, Conversent argues that if the Department changes the audit from annual to triennial, the audit should cover the entire performance period so that Verizon's performance under the PAP for a two-year period would not escape scrutiny (*id.*). Conversent asserts that an audit covering a three year period would not be significantly more costly than an audit of a one year period every three years (*id.*).

CTC concurs with the comments of Conversent and states that the "primary reason for Verizon's current level of service under the existing PAP is the annual audit. Without the annual audit requirement, Verizon's incentive to perform well will dramatically decline" (CTC Comments at 1). CTC argues that the Department should not change the audit from mandatory to discretionary as the solvency of competitors in the marketplace would be placed at risk (*id.* at 2). The Department should not limit the review to the last year of a three year period

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<sup>5</sup> Letter to Mary L. Cottrell, Secretary, Department of Telecommunications and Energy from Bruce P. Beasusejour, Vice President and General Counsel, Verizon New England at 3 (November 8, 2005).

<sup>6</sup> Although comments were due on December 8, 2005, CTC filed a motion requesting that CTC be allowed to file its comments late. The Department approved that motion and considers CTC's comments in its evaluation of Verizon's proposal.

because Verizon would have no incentive to comply with its PAP obligations during the non-audited two year period (id.). On January 12, 2006, the Department submitted four information requests to Verizon to which Verizon responded on January 26, 2006.

As noted above, the Department must decide whether to change the frequency of Verizon's PAP audits from annually to triennially and to make the triennial audit at the discretion of the Department. At the outset, it is worth noting that what the Department is really considering is a change from a mandatory audit every two years to a discretionary audit every three years. Because of timing-related issues, the annual audit requirement in practice has been a biennial audit requirement.

As Verizon points out, PAP audits are expensive, time consuming, and resource intensive. Thus, the frequency should be determined by what is necessary to prevent Verizon from back-sliding on its wholesale performance.

The record demonstrates that, based on the results of two separate comprehensive audits conducted by two different independent auditors, Verizon has fully complied (with a few minor exceptions) with its PAP requirements since the PAP took effect in 2001. Furthermore, the complexity of the PAP structure and Verizon's metrics reporting systems, we believe, make it very difficult for Verizon to "game" the system by degrading service during off-audit years. Additionally, safeguards exist to prevent such behavior. First, Verizon will be subject to audits in other states, primarily the mid-Atlantic states, that will serve to "keep honest" Verizon's activity in Massachusetts. Because the audits and PAPs in those states are the same or very similar to those in Massachusetts, and the results of those audits flow through to the PAP processes and systems in Massachusetts, they will have the effect of indirectly "policing" Verizon's activities here. The Department intends to monitor the results of those states' audits closely in order to keep informed of any problem areas. In addition, we will closely review Verizon's monthly reports to detect any unusual results or trends that could indicate reporting related problems, and any significant increase in change management activity – activity that could increase the likelihood of PAP reporting errors.

Based on the above information, we find that an annual audit requirement is not necessary to ensure that Verizon maintains its PAP obligations, and that a triennial audit requirement shall be mandatory, rather than discretionary, as Verizon proposed, in order to provide a measure of certainty to the CLEC community that Verizon's Massachusetts PAP results will be scrutinized on a regular basis. In addition, the Department reserves the right to conduct an out-of-cycle audit should, based on our review of audit results from other states or Verizon's monthly reports, or based on credible information from CLECs, the Department have strong evidence that Verizon is not fully complying with its PAP obligations.

Accordingly, the Department approves Verizon's proposal to change the annual PAP audit requirement to a triennial audit requirement. The next audit will be conducted in 2008, and like the previous two audits, will evaluate the most current "final" monthly results during the most recent twelve months of wholesale performance. An RFP is due to the Department for our review, no later than June 30, 2007. In addition, to facilitate our review of other state audit results, Verizon is required to report to the Department no later than March 1 of each calendar year, the results of all audits in other states conducted during the previous calendar year and provide a schedule of audits to be conducted during the upcoming calendar year.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Judith F. Judson, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Paul G. Afonso, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Brian Paul Golden, Commissioner